D.B. CIVIL SPECIAL APPEAL NO.373/2004

State of Rajasthan Vs. Devilal & Anr.

Date : 26.02.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. L.R. Upadhyay, Dy. Government Advocate.
Mr. B.N. Kalla for the respondents.

Heard learned counsel for the parties.

This appeal is directed against the dismissal of the writ petition filed by the appellant vide judgment under appeal dated 19th May, 2003.

The case in short is that the respondent No.1, who was employed with the appellants on 5.2.1992 as a Lab Boy in the pay scale of Rs.775-1025 and thereafter vide order dated 22nd December, 1992, the services were terminated retrospectively w.e.f. 1.8.1992 alleging that the said respondent was not qualified to hold the post. The said termination order was challenged by way of raising an industrial dispute which was referred to the

Labour Court, Udaipur.

The appellants have contended before the learned Labour Court also that the termination was effected because the incumbent was not qualified to hold the post and he has produced an incorrect and forged qualification certificate.

However, admittedly, no enquiry about the correctness of the said certificate has been made before terminating the services. The employer himself did not consider it to be a case of termination simplicitor, the question of considering it a case of retrenchment did not arise. Moreover, if it is considered to be a case of retrenchment, admittedly the provisions of Industrial Disputes Act have not followed. Be that as it may, on the admitted case, the termination order was made without making any enquiry by the employer about the allegations levelled against the workman, hence the termination order being punitive in nature and passed in breach of natural justice was not valid. Significantly no opportunity was sought by the employer even before

Labour Court to prove this allegation before it.

In that view of the matter, if the Labour Court has found the termination to be invalid and directed reinstatement it cannot be said to have committed any error much less error apparent on the record. In the circumstances, the learned Single Judge was right in not exercising the extra ordinary jurisdiction.

Accordingly, the appeal fails and is hereby dismissed.

[CHATRA RAM JAT], J. [RAJESH BALIA], J.

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